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MONTANA LEGISLATIVE HISTORY

Chapter 464 1993

Bill H _____ S 329 Original bill & history ✓ C

H. Committee on Labor & Employment Relations			S. Committee on Labor & Employment Relations		
Hearing Date(s)	3-9	C	Hearing Date(s)	2-18	C
	3-11	C		2-20	C
		C			C
		C			C
Date Out	3-11	C	Date Out	2-20	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 329 INTRODUCED BY KLAMPE

REVISE PREVAILING WAGE ON PROJECTS FINANCED FROM BOND PROCEEDS ISSUED AFTER JUNE 30, 1993

2/05	INTRODUCED		
2/05	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/05	FIRST READING		
2/05	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/18	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	47	2
2/24	3RD READING PASSED	42	6
	TRANSMITTED TO HOUSE		
3/01	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/01	FIRST READING		
3/09	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	TAKEN FROM ENGROSSING AND REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	82	15
3/30	TAKEN FROM ENGROSSING AND PLACED BACK ON 2ND READING		
3/30	2ND READING CONCURRED AS AMENDED	91	8
4/01	3RD READING CONCURRED	78	20
	RETURNED TO SENATE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	50	0
4/07	3RD READING AMENDMENTS CONCURRED	49	0
4/13	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR CHAPTER NUMBER 464 EFFECTIVE DATE: 04/21/93		

SB 330 INTRODUCED BY NATHE

CLARIFY LAWS ON SUSPENSION AND REVOCATION OF TEACHING CERTIFICATES

BY REQUEST OF BOARD OF PUBLIC EDUCATION

2/08	INTRODUCED		
2/08	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/08	FIRST READING		
2/08	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/15	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	49	0
2/24	3RD READING PASSED	47	1
	TRANSMITTED TO HOUSE		
3/01	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/01	FIRST READING		
3/08	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	94	0
3/30	3RD READING CONCURRED	95	2

Senate BILL NO. 329

INTRODUCED BY Klampl

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED WITH TAX-EXEMPT REVENUE BONDS; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital, an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and

financed in whole or in part by tax-exempt revenue bonds will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by

publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 2. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation

by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves therefor for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital,

an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt revenue bonds will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if no a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for

2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception.** (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay the standard

prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel ~~allowance, provisions~~ and other bona fide programs approved by the United States department of labor, that are in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

(4) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt ~~industrial~~ revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the project will be owned and operated by a nonprofit corporation other than a hospital or unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions described in subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be

enforced in ~~such~~ a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency."

Section 4. Section 90-5-114, MCA, is amended to read:

"**90-5-114. Preference of Montana labor.** (1) Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt

revenue bonds must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the project will be owned and operated by a nonprofit corporation other than a hospital or unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed."

Section 5. Section 90-7-302, MCA, is amended to read:

"**90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $150 million, exclusive of bonds or notes issued to refund its outstanding bonds or notes.

(2) Bonds must be authorized, ~~and~~ must be dated, and ~~shall~~ must mature as the authority may specify, except that ~~no~~ a bond may not mature more than 40 years from the date of its issue. Bonds ~~shall~~ must bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves ~~therefor~~ for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) Except for a project that will be owned and operated by a nonprofit corporation other than a hospital, the authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt revenue bonds will contain a provision requiring the contractor to pay the

standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(6)~~(7) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

NEW SECTION. **Section 6.** **Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0329, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the requirement for prevailing wage on a project financed with tax-exempt revenue bonds; amending sections; and providing an immediate effective date.

ASSUMPTIONS:
1. SB0329 adds an additional requirement that must be met by certain applicants seeking loans from the proceeds of tax-exempt revenue bonds issued by the Board of Investments (BOI), the Montana Health Facilities Authority (MHFA), and Montana's cities and counties.
2. All for-profit entities and non-profit hospitals seeking loans from tax-exempt bonds issued by the BOI, MHFA, cities and counties must submit, with their loan application, a statement indicating that any contract they let for projects costing more than $25,000 will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect in the district in which the work is being performed.
3. General Services Division and Architecture and Engineering Division, Department of Administration already have prevailing wage in their contract work.

FISCAL IMPACT:
Although this legislation adds one more loan criterion which BOI and MHFA staff will be required to review, any additional workload can be accommodated by existing staff levels.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
This legislation should have little, if any, fiscal impact on cities and counties that issue tax-exempt revenue bonds.

Dave Lewis 2-9-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

TERRY KLAMPE, PRIMARY SPONSOR DATE

Fiscal Note for SB0329, as introduced

SB 329

SENATE BILLS STATUS SHEET

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

BILL NUMBER	ENTERED COMMITTEE	CONSIDERED	OUT OF COMMITTEE	DP DO PASS	DNP DO NOT PASS	DPAA DO PASS AS AMENDED	DNPAA DO NOT PASS AS AMENDED
SB 270	1/28/93	2/9/93	2/10/93			2/09/93	
SB 274	1/29/93	2/16/93	TABLED				
SB 329	2/5/93	2/18/93	2/20/93			2/20/93	
SB 342	2/9/93	2/18/93	2/20/93			2/20/93	
SB 347	2/9/93	2/16/93	2/20/93			2/20/93	
SB 360	2/11/93	2/20/93	2/20/93	2/20/93			
SB 377	2/12/93	2/20/93	2/20/93			2/20/93	
SB 381	2/12/93	2/20/93	2/20/93			2/20/93	
SB 394	2/13/93	2/18/93	2/20/93		2/20/93		
SB 405	2/15/93	2/20/93	2/20/93			2/20/93	

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

Committee ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Tom Towe, on February 18, 1993, at 1:00 PM.

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 329, SB 342, SB 394
Executive Action: None

HEARING ON SB 329

Opening Statement by Sponsor:

Senator Klampe, Senate District 31, opened on Senate Bill 329. He told the Committee SB 329 was a bill that would allow Missoula to build an ice skating rink. Senator Klampe stated that during the Hearing the members and witnesses would be talking about Tax Exempt Revenue Bonds, non-profit corporations, and prevailing wage. He stated the intent is to exclude non-profit groups and corporations from the prevailing wage requirement. He clarified that this exclusion did not include hospitals. Senator Klampe told the Committee there were two other purposes of SB 329. He explained that these were to clarify the statutes. The first of these purposes was to clarify that what the bill addressed with the prevailing wage provision was only the portion of a project

financed with the Tax Exempt Revenue Bond, and not the entire project. The second purpose is that the prevailing wage requirement should be applicable to projects financed with the bonds issued after July 1, 1993.

Proponents' Testimony:

Greg Rutherford from Missoula, representing Missoula On Ice, Inc., a 501(c)3 non-profit organization, stated that a 501(c)3 organization is an organization that has some advantages under tax laws because it is engaged in projects that benefit the public. Mr. Rutherford said that there are a very strict set of rules passed under the Internal Revenue Service, and Missoula On Ice, Inc. had met the requirements set by those rules to be a 501(c)3 organization. He stated that not all non-profit organizations are 501(c)3 groups. Mr. Rutherford's organization would like to build an ice skating rink in Missoula for non-profit purposes to benefit the community, and would like to keep the cost of use of the facility to a minimum to the user. He stated that part of this project could use volunteer workers to build the rink. Mr. Rutherford stated that SB 329 would allow this organization to use volunteer workers, even though revenue bonds are used as a source to fund the ice skating rink. Senate Bill 329 would allow a non-profit group to let volunteers help out if the project was a benefit to the community without the group having to worry if it was violating prevailing wage laws.

Mae Nan Ellingson, Dorsey and Whitney Law Firm spoke in support of SB 329 from written testimony (Exhibit #1).

John Lawton, City Manager of Great Falls offered the Committee what he called a practical application of what SB 329 would mean in view of a particular project in Great Falls. The American Ethanol Corporation and the OBECO Corporation and others are planning a $120 million ethanol plant in Great Falls. $10 million to $12 million will be sold in industrial development tax increment bonds to build the infrastructure of the plant. Mr. Lawton defined the infrastructure as the water, sewer, roads, gas lines, and other such needed items. He told the Committee that the tax increment feature of this plan is the only economic development tool that the project has to promote economic development. The City of Great Falls has been told several times by the developers of this plant that the City's ability to issue industrial development tax increment bonds to help support the plant is the only thing that equalizes the Montana tax structure with those of surrounding states. The current law requires that prevailing wages be paid on the entire project if a public portion is being financed with tax increment bonds. Mr. Lawton said that this is not an argument against prevailing wage rates because most of the contractors that would build the plant would be union contractors, or would pay the prevailing wage. Mr. Lawton told the Committee that the City of Great Falls doesn't feel there should be a law that requires prevailing wage to be paid on the whole project. He urged support of Senator Klampe's

amendments (SB032901.AEM).

Gene Fenderson, Montana District Council of Laborers', brought before the Committee a set of proposed amendments to Senate Bill 329 (Exhibit #2). He said he did not exactly support SB 329, but would with these amendments. In addition, he made reference to a similar bill brought before the Montana State Legislature before. He said Representative Southworth and others worked on the Bill, and were told that the wording "Industrial Tax Exempt Bonds" would cover everything. Mr. Fenderson told the Committee that now bonds under different names were being called something else. He explained that he felt if public monies were going to be involved, then the prevailing rate should be covered. He claimed nothing he knew of would prevent volunteer labor from working on an ice skating rink or anywhere else. He questioned that portion of the project covered by the Bond. Mr. Fenderson said that the companies that deal in the large projects use tax exempt bonds as leverage by gaining the backing of the monetary institutions.

Dan Whyte, ARCO, rose in support to SB 329 with the amendments proposed by Senator Klampe (SB032901.AEM), specifically the amendment making the Bill apply to bonds issued after July 1, 1993.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Dan Whyte what interest ARCO had in this type of bill. Mr. Whyte answered it was his understanding ARCO has some projects with Washington Corporation and they deal on some degree with taxes and bonds.

Senator Lynch asked Dan Whyte if ARCO was more concerned with the bond section than with the prevailing wage section in the Bill, and ARCO was suggesting that people should be allowed to employ without paying prevailing wages. Mr. Whyte said that ARCO was not suggesting that, but rather was interested in the tax exempt bond portion of the Bill. He said that ARCO was interested in clarifying statutes.

Senator Blaylock asked Gene Fenderson if he was for or against the Bill. Mr. Fenderson answered that there were some problems with the Bill, but he hoped the Committee could work them out through his proposed amendments (Exhibit # 2).

Senator Blaylock asked Mae Nan Ellingson why people using

volunteer labor needed to have the exemption from the prevailing wage requirement. Mae Nan Ellingson answered that the Committee would have to decide whether or not to exempt not-for-profit corporations from the provisions of the requirement. She went on to add that the Bill was not talking about Industrial Revenue Bonds, bonds issued by cities and counties or the Board of Investments in aid of economic development projects, or use of public tax dollars. She clarified that the Bill was not talking about using tax dollars to build the projects such as the ice skating rink.

Senator Lynch asked Senator Klampe why, though the Committee and the witnesses had been talking primarily about volunteer labor, volunteer labor was never mentioned in the Bill. Senator Klampe answered that no one who testified ever said they were talking exclusively about volunteer labor.

Senator Keating asked John Lawton if what he had testified to meant the City of Great Falls needed to issue Industrial Development Tax Increment Bonds to fund the proposed ethanol plant because taxes were so high in Montana; that this was the only way to gain an advantage over North Dakota and other states. Mr. Lawton answered that the Industrial Development Tax Increment Bond Authority would sell bonds and build a public portion of the ethanol plant. This portion would include infrastructure such as roads, and would cost from $10 to $12 million. He explained that the bonds would be paid back through the taxes on the increased value of the land and facilities. This would be the only tax money that would be used to pay off those bonds.

Senator Keating asked John Lawton if North Dakota and Idaho had Industrial Development Bonds. Mr. Lawton answered that he was not sure.

Senator Keating asked John Lawton if he meant that by having the ethanol plant pay off the bonds with property tax, the city was alleviating some property tax. Mr. Lawton answered that this was correct. He estimated that the plant's taxes would be $3 to $3.5 million per year; about $1.2 million of these taxes would go to pay off the bonds.

Senator Towe asked Senator Klampe if he would agree to Mr. Fenderson's amendments (Exhibit #2). Senator Klampe answered that he would not, but he would offer a compromise amendment.(Ex.#2a).

Senator Towe asked Senator Klampe why the ice skating rink project could not pay prevailing wage if it were funded with tax exempt bonds. Senator Klampe answered that the rink had had a very hard time getting started, and the exemption would aid the development. He proposed that the Bill be amended to include only 501(c)3 corporations to make it more acceptable.

Senator Lynch asked Gene Fenderson if it were common for union workers to work for less than prevailing wage. Mr. Fenderson answered that he was not aware of such a practice.

Senator Lynch asked Senator Klampe if the contractors they had been discussing were non-union. Senator Klampe directed the question to Greg Rutherford. Mr. Rutherford answered that the situation of a union contractor working for less than the prevailing wage might come about if there were a special contract involved, but a non-union contractor would be the most likely contractor to work on these projects.

Senator Towe asked Greg Rutherford why a contractor could not make an agreement to donate part of his or her work time and be paid the prevailing wage for the other part of the work time. Mr. Rutherford said he was not sure what the laws were that governed that type of agreement. Senator Towe said that a person can volunteer at any time, but that if a person wants to get paid that person should get the prevailing wage.

Senator Towe asked Mae Nan Ellingson if the Committee was to conclude not to release the non-profit corporations from the prevailing wage, would there still be parts of Senate Bill 329 that should be passed. Ms. Ellingson answered that the Committee should clarify what the Bill applies to, put the law where it could be found, and make the Bill applicable to bonds issued after July 1, 1993.

Closing by Sponsor:

Senator Klampe closed. He reviewed the three points of Senate Bill 329: To get the ice skating rink built in Missoula; to amend the bond laws so that a project can accept tax exempt revenue bonds but not apply the bond rules to the portion of the project not covered by the bonds; and to get the Committee to clarify the applications of the Bill, put the law where it is available, and to make the Bill applicable to bonds issued after July 1, 1993.

HEARING ON SB 342

Opening Statement by Sponsor:

Senator Wilson, Senate District 19, opened on Senate Bill 342. He told the Committee the Bill was being introduced at the request of a group of laborers' organizations in an attempt to find a compromise with SB 62. SB 342 would allow employers or contractors to continue their pension and insurance programs for their employees. Senator Wilson explained the current law does not technically allow this. SB 342 would bring the employers and contractors in line with federal law. This was the intent of SB 62. In addition to this intent, SB 342 would penalize the contractors and subcontractors failing to pay standard prevailing

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32-2-504.46.11

TO: Senator Terry Klampe and
Members of Senate Business and Industry Committee

FROM: Mae Nan Ellingson

DATE: February 18, 1993

RE: SB 329

SENATE LABOR & EMPLOYMEN
EXHIBIT NO. 1
DATE 2/18/93
BILL NO. SB 329

The 52nd Legislature in 1991 enacted HB 591, which provides as follows:

> A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

That bill has been codified in the public contract laws at Section 18-2-403(4). At least three significant problems have arisen relating to this law: (1) it is not clear what bonds are referred to in the phrase "tax-exempt industrial revenue bonds"; (2) because the law is not codified or referred to in any of the statutes relating to the issuance of tax-exempt bonds, most issuers and underwriters of bonds, bond counsel, borrowers and others working with tax-exempt bonds have been unaware of the law, with the result that the law may often but inadvertently have been violated; and (3) because the law refers to "a contract let for a project" it is not clear how it applies in the case of a total construction program of which a bond-financed project might be but a part.

We encourage this committee and the legislature to approve legislation which would: (1) clarify which type of bonds the prevailing wage requirement applies to, (2) direct that the provision be codified or referred to in the appropriate

bond statutes, (3) clarify how it applies to large undertakings of which bond-financed projects are but a part, and (4) establish that if and to the extent the prevailing wage requirement applies to bond-financed projects, it applies only to projects financed by bonds issued after the effective date of the clarifying legislation.

Background of HB 591. HB 591 was introduced in the 1991 session as a bill entitled "A Bill to Require that a Contract Let for a Project Costing More Than $25,000 and Receiving a State Tax Exemption Contain a Provision Requiring the Contractor to Pay the Standard Prevailing Wage." Even though HB 591 was amended in the House Taxation Committee to substitute the term "financed in whole or in part by tax-exempt industrial revenue bonds" for "receiving a state tax exemption," a significant change in concept, the status sheet through the legislative session continued to define the bill as "Prevailing Wage Law Applies to Tax Exempt Project". This may explain, at least in part, why persons involved with the issuance of tax-exempt industrial revenue bonds did not attend the committee meetings, did not offer comments in 1991, and were generally not aware of the passage of the law. I have reviewed the testimony on HB 591 before both the House Taxation Committee and the Senate Taxation Committee, and do not find anywhere a clear statement of the intent of the sponsor of the legislation as to the applicability of the proposed legislation. Those minutes also reflect a misunderstanding of "tax-exempt industrial revenue bonds." To aid the Committee in appreciating the problem which the law has created and determining how to amend the law, we think it might be helpful to describe the term "tax-exempt industrial revenue bonds", who issues them in Montana and for what purposes.

Overview of Industrial Revenue Bonds. Before 1968, the Internal Revenue Code permitted the issuance of state and local bonds on a tax-exempt basis even if the proceeds of the bonds were used completely for private purposes. As a general rule, State statutes authorized the issuance of such bonds where the State or local government found that tax-exempt financing could serve, foster or encourage within its jurisdiction a public interest or public purpose, such as economic development and job creation through industrial, manufacturing, and commercial projects. Similarly, tax-exempt financing was made available to organizations providing goods and services of benefit to the community, such as hospitals and other health care facilities, pollution control facilities, multifamily housing, hydroelectric facilities and recreation facilities. The State statutes authorizing these bonds generally characterized them as industrial revenue bonds ("IRB's"), industrial development bonds ("IDB's"), or economic development bonds. In 1968, Congress

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amended the Internal Revenue Code to include a definition of "industrial development bond". In essence an industrial development bond was an issue of bonds more than 25% of the proceeds of which was used in the trade or business of a non-exempt person and more than a major portion of the principal and interest of which was secured by, or was to be derived from, payments in respect of property used in a trade or business. With the 1968 amendment interest on industrial development bonds became subject to federal income taxation unless the bonds were within one of several exceptions.

The state or municipality issuing industrial development bonds was rarely if ever the obligor on the bonds. Most often, the issuer would loan the proceeds of the bonds to the private borrower, who would agree to use the proceeds to construct or acquire a particular facility and to repay the loan at times and in amounts sufficient to pay the principal of and interest on the bonds when due. In Montana, like most states, the enabling legislation provided that the issuer had no pecuniary liability on the bonds so issued. Since no public money was involved, other than the proceeds of the bonds which were repayable by the private borrower, and the project was not a public facility, such projects have not generally been subject to the competitive bidding requirements or other laws applicable to public projects or contracts. Similarly, recognizing the private character of the bond-financed projects, the projects are normally subject to property taxes, unless the financing itself is for a tax-exempt organization, such as a hospital.

Over the years and particularly since 1986, the restrictions on tax-exempt financing for the benefit of private parties have increased. With the adoption of the Internal Revenue Code of 1986, the term "industrial development bonds" or IDB's" as they were called, was removed from the Code. Instead, the 1986 Code now refers to "private activity bonds," which are defined so as to include all bonds which were industrial development bonds but also includes a variety of other bonds which were not industrial development bonds.

Under the Code as it currently exists, private activity bonds bear interest exempt from federal income taxes only if they satisfy many statutory requirements and regulations and are issued for one of the following purposes:

A. Exempt Facilities Bonds
   (1) airports,
   (2) docks and wharves,

(3) mass commuting facilities,
(4) facilities for the furnishing of water,
(5) sewage facilities,
(6) solid waste disposal facilities,
(7) qualified residential rental projects,
(8) facilities for the local furnishing of electric energy or gas,
(9) local district heating or cooling facilities,
(10) qualified hazard waste facilities, or
(11) high-speed intercity rail facilities;

B. Qualified Student Loan Bonds; or

C. Qualified 501(c)(3) Bonds (this includes hospitals).

In Montana, there are currently five entities that are specifically authorized to issue "private activity bonds". In addition, the State, through the Board of Examiners, may issue bonds which would generally be deemed to be "private activity bonds" for purposes of the Code, even though the facility financed is owned and operated by the State. The Broadwater Dam project is a good example. Similarly, cities are authorized by Title 7, chapter 7, part 44, to issue revenue bonds to finance various facilities, including airports and public parking facilities; such bonds, because of the "non-governmental use" of the facilities, may also be private activity bonds. In addition, cities and now counties are authorized to issue tax increment bonds for certain purposes and some of such bonds may also constitute private activity bonds. To complicate matters further, they may bear interest that is not tax-exempt for federal tax purposes.

1. Cities and counties have been authorized since 1965 under the provisions of Title 90, Chapter 5, Part 1, MCA, to issue bonds to finance projects for "commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects." Bonds issued to finance some of these projects, even though permitted by Montana law, would no longer qualify for federal tax exemption. While the title of Chapter 5 of Title 90 is "Industrial Development Projects," the statute itself does not use that term with reference to bonds issued under that law. (Generally, the title of the bonds would

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reflect the nature of the project for which the bonds were being issued, for example, "Hospital Revenue Bonds", "Solid Waste Facility Bonds" and would not likely be called "Industrial Revenue Bonds.") Was it the intent of HB 591 that the prevailing wage requirement extend to all types of bonds issued by cities and towns under this Act?

2. The Board of Investments is authorized to issue bonds for the same types of projects as those for which cities and counties may issue bonds, under the Economic Development Bond Act of 1983. As with the cities and counties, some of the authorized purposes may no longer be eligible for tax-exempt financing under the Code.

3. The Montana Health Facility Authority (the "MHFA") is authorized by Title 90, Chapter 7, Part 3, to issue bonds for eligible health facilities that are owned and operated by nonprofit corporations. Under this statute, the MHFA provides tax-exempt financing to hospitals, as well as small nonprofit corporations which construct, with tax-exempt bonds, facilities such as day care centers and group homes in local communities, which may in turn provide services to State clients on a contract basis with the State.

4. The Montana Board of Housing is authorized under Title 90, Chapter 6, Part 1, to issue bonds to finance both single family and multifamily housing.

5. The Montana Higher Education Student Assistance Corporation is authorized to issue Qualified Student Loan Bonds. Since those bonds would not finance projects within the meaning of 18-2-403(4), those bonds probably are not at issue here.

Under current Montana law, interest on bonds issued by Montana governmental entities is exempt from state income tax, whether or not such interest is exempt from federal income tax.

Currently, the laws governing the issue of private activity bonds by the Board of Investments and cities and counties do require contracts for the construction of bond financed projects to require that contractors give a preference to Montana labor. See 90-5-114, 17-5-1526 and 17-5-1527, MCA.

Current State of Confusion. Since HB 591 did not define the term "tax-exempt industrial revenue bonds," it is difficult to determine to which of the bonds described above the legislation was meant to apply. Because the Code no longer uses the term "tax-exempt industrial revenue bonds" (and did not include the term when HB 591 was passed), there is no extraneous definition to assist in interpretation. Under the 1954 Code definition (i.e., pre-1986), bonds issued to finance hospital projects owned and operated by a 501(c)(3)organization, would not in most cases be industrial revenue bonds, but such bonds are likely to be private activity bonds under the 1986 Code. The committee minutes shed some light on the intent, but are in themselves confusing. It appears from the February 14 hearing in the House Taxation Committee, that the proponents believed that taxes or other public money was being used for the projects being financed. Two separate statements indicated that because the contractors were being paid from public funds to complete the projects, there was no reason to not make them subject to the prevailing wage. (Perhaps because of the discussion about public monies being used for these types of projects, it was deemed appropriate to codify HB 591 in Title 18, which is the title reserved for Public Contracts. No other provisions of the public contract law apply to projects financed with tax-exempt bonds, except the Montana labor preference which is clearly indicated in provisions of the pertinent bond law.) It is unclear, however, that the decision to require prevailing wage rested on whether public funds were actually being used. One proponent indicated an intent to have the provision apply when cities, counties and the State were issuing tax-exempt bonds to promote industrial and commercial expansion.

One proponent indicated that it was not the intent to have it apply to Board of Housing programs. It was suggested that an amendment would be offered to exempt the Board of Housing, but it does not appear that such an amendment was offered. No mention was made of an intent to have the statute apply to hospitals or other health care projects, but subsequently to enactment of the legislation a proponent has contended that its intent was to have it apply to hospitals.

Uncertainty as to Meaning of "Project". HB 591 by its terms applies to "a contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds." The term "project" is also used in the laws we referred to above which authorize the issuance of certain types of state and municipal bonds. If bonds are issued to finance a "project" which is but one component of a facility, it seems reasonable to interpret HB 591, if applicable, as meaning the bond-financed project, but it is also possible because of the phrase

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"financed in whole or in part" that the "project" under HB 591 is the total facility of which the bond-financed project is but a part. For example, the City of Great Falls has announced its intent to issue tax increment industrial infrastructure bonds to finance certain public improvements (streets, sewers, utilities, etc.) related to the American Ethanol project. The tax increment bonds will be issued in the approximate amount of $10,000,000-$12,000,000, but the total costs of the project are expected to be $80,000,000-$90,000,000. The contract for the improvements financed by the City's bonds would be subject to the prevailing wage law because the contract would be a public contract as public money is being used to finance the improvements. There is a question under the statute whether the use of the tax increment bonds would cause the remainder of the project to be subject to the prevailing wage law. This uncertainty should be eliminated and would be eliminated in two respects by the adoption of the amendments proposed by Senator Klampe.

Policy Decision. We do not discuss whether it is good public policy to require that contracts for construction of projects financed in whole or in part with bonds which are private activity bonds under the Internal Revenue Code should contain a provision that the contractor pay the prevailing wage. That is obviously a policy decision for the legislature, and no doubt arguments may be made on both sides of this issue. (It should be noted, however, that the issuance of tax-exempt bonds is one of the few economic development tools that governmental entities in Montana have. We have not undertaken a survey of other states to determine how many require the payment of prevailing wages as a condition for tax-exempt bonds, but we do know that a substantial number of our neighboring states do not.) Our concern as lawyers, and more specifically as bond counsel and as counsel for state and local governments issuing private activity bonds, is that whatever the legislative decision, it should be expressed clearly. We think HB 591 is not clear and that parties most affected by its provisions (issuers and borrowers alike, as well as financial advisors and legal counsel) have not been aware of its existence. We therefore recommend that it be reconsidered and that if retained it be clarified and made effective to contracts entered into with respect to bonds issued after a future date (e.g., July 1, 1993).

SB 329 as introduced would: (1) require the prevailing wage be paid on all contracts in excess of $25,000 for projects financed in whole or in part by tax-exempt revenue bonds, unless the project is for a nonprofit corporation, other than a hospital or the contractor has a collective bargaining agreement in place; and (2)

codify the requirement in the sections of law authorizing cities and counties, the Board of Investments and the Montana Health Facility Authority to issue tax-exempt bonds. As it stands, it does not: (1) clarify "the project financed in whole or in part" question, (2) make an exception for Board of Housing bonds, or (3) provide that the provisions will be applicable after this statute is enacted on July 1, 1993. Accordingly, we recommend the committee approve the amendments presented by Senator Klampe, which would specify that only the project financed by bonds be subject to the prevailing wage requirement. The amendments also removed the term tax-exempt and instead refer to bonds issued by the entities described in the bill. This seems consistent with what we now understand to be the original intent and avoids having to try to define in the statute the terms "tax-exempt bond", "private activity bond" or "industrial revenue bond".

MNE:jlc

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2/18/93
BILL NO. SB 329

Amendments to Senate Bill 329

page 2, lines 22 and 23, following subsection (g), strike everything through the word "hospital"

page 2, line 24, change the word "an" to "a"

page 5, line 24, following subsection (g), delete entire line

page 5, line 25, delete entire line

page 8, lines 16 and 17, following the word "performed" delete everything through the word "hospital"

page 11, line 19, subsection (6), delete entire line

page 11, line 20, delete entire line

EXHIBIT 2a
DATE 2-18-93
SB 329

Amendments to Senate Bill No. 329
First Reading Copy

Requested by Senator Klampe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 17, 1993

1. Title, lines 5 and 6.
Following: "FINANCED" on line 5
Strike: remainder of line 5 through "REVENUE" on line 6
Insert: "FROM THE PROCEEDS OF"
Following: "BONDS"
Insert: "ISSUED ON OR AFTER JULY 1, 1993"

2. Page 3, line 1.
Page 6, line 3.
Page 9, lines 25 and 26.
Page 11, line 24.
Following: "financed"
Strike: "in whole or in part by tax-exempt revenue bonds"
Insert: "from the proceeds of bonds issued under this part on or after July 1, 1993,"

3. Page 8, lines 12 and 13.
Following: "financed"
Strike: remainder of line 12 through "bonds" on line 13
Insert: "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993,"

DATE 2-18-93

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 329 - SB 342 - SB 394

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Ron James	Iron Workers Lo 841	342	✓	
Charles R Brooks	MT. Roofing Assoc	394	✓	
Greg Rutherford	Missoula On Ice Inc.	329	✓	
Sonny Luckner	Mont - Cont. Trust	342		✓
Carl Schweitzer	MCA	342		—
Bradley B Talcott	Mont Contractor Trusts	342		✓
John Lawton	City of Great Falls	329	✓	
Mike Egan	MT Conf Elect Wkrs	329	—	Amd
Mike Egan	" " "	342	—	
John Mawzer	Teamsters Union	342	✓	
~~John Mawzer~~	~~Teamsters Union~~	~~342~~	~~✓~~	
Michael Mizenko	MT. State Asso Plumbers	329	✓	
Michael Mizenko	MT. State Asso. Plumbers	342	✓	
Eric Feaver	Labor Union	329 342	✓	?
Mac MacElwain	Mossey & Attorney	329		
Riley Johnson	NFIB	394	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/18/93

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: SB 329 SB 342 SB 394

Name	Representing	Bill No.	Check One: Support	Oppose
Don Judge	MT STATE AFL-CIO	SB 342	✓	
Mike Micone	MMCA	SB394	✓	
Roger B Hill	Mt Trial Lawyers	SB394		✓
Rick Thiel	Gov Office	SB394	✓	
Don Judge	MT STATE AFL-CIO	SB 394		✓
Kent Kleinkopf	self	SB394		X
Jacqueline Denmark	AIA	SB 394	✓	
Gene Phillips	NAII	SB 394	✓	
Dan Whyte	Arco	SB329	w/Amend. ✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Towe, on February 20, 1993, at 1:30 PM

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 377, SB 381, SB 360, SB 405
Executive Action:	SB 347, SB 342, SB 62, SB 394, SB 329, SB 274, SB 377, SB 381, SB 360, SB 405

HEARING ON SB 377

Opening Statement by Sponsor:

Senator Sue Bartlett, Senate District 23, told the Committee SB 377 would require employers to provide a ten minute rest periods to employees for every four working hours. Senator Bartlett explained the Bill was drafted in response to a request of people in Senate District 23. These people work for an employer who had provided for rest periods during the company's history in Montana. The company was purchased by a national corporation, and the new owners prohibit rest periods because Montana law does not require it. Each time the employees requested breaks, they were told they would not have them until rest periods were required by state law. Senator Bartlett told the Committee among Western states Colorado, Utah, Nevada, Oregon, Washington, and

EXECUTIVE ACTION ON SB 394

Discussion:

Senator Keating stated he had originally signed on to SB 394, but had received phone calls from workers who had a hard time receiving benefits. These workers told Senator Keating if it was not for their attorneys they would not be receiving benefits. Senator Keating said there were already some limits on attorney's fees.

Motion:

Senator Keating moved that SB 394 DO NOT PASS.

Discussion:

Senator Aklestad argued against the motion. He stated the Bill suggested there was a problem in workers' compensation with attorney's fees. He said he did not agree with the idea that employees were going to be harmed by SB 394. He said this should aid employees by limiting the money they would need to pay an attorney.

Senator Towe stated this was not true because the attorneys' fees were generally higher than the recovery made by the employee. He said SB 394 did not affect the employee's recovery, because the money came out of the State Fund. Senator Towe argued that under SB 394 the benefits to attorneys would not be high enough to give them incentive to represent workers' compensation cases.

Senator Blaylock stated he had received calls from injured workers who were fearful because they could not get representation under current attorney rates.

Senator Keating said he had not found the same problems with finding representation for workers' compensation cases with the self-insured plans. He said the only type of insurer he heard a complaint about was the State Fund. He told the Committee he was reluctant to take the representation away from people who were not being served.

Vote:

The motion CARRIED, with Senator Towe, Senator Keating, Senator Wilson, and Senator Blaylock voting YES. Senator Lynch voted YES by proxy. Senator Aklestad and Senator Burnett voted against the motion. Senator Aklestad requested a Minority Report on SB 394.

EXECUTIVE ACTION ON SB 329

Discussion:

Eddye McClure explained amendments. She told the Committee amendments SB032901.AEM, requested by Senator Klampe, and amendments SB032903.AEM, requested by Senator Towe.

Motion:

Senator Aklestad moved adoption of amendments (SB032901.AEM).

Discussion:

Senator Blaylock said he did not agree that SB 329 was going to exempt certain projects from the prevailing wage. Senator Towe answered Senator Blaylock's concern could be addressed in amendments SB032903.AEM.

Gene Fenderson said he had a meeting with Senator Klampe. He explained SB 329 had three parts: To change codification; to exempt non-profits from the prevailing wage rule; and to define a new effective date. Mr. Fenderson told the Committee he had agreed with Senator Klampe on the codification, the effective date, and the amendment to take out non-profits from not being covered under SB 329. Mr. Fenderson said his concern with Senator Klampe's amendments was the part that eliminated the wording "in whole or in part by tax-exempt revenue bonds." He said the original intent of the legislation was if a project received revenue bonds, the whole project was covered by a prevailing wage provision.

Senator Towe responded the amendment was not inconsistent with the intent Mr. Fenderson stated. He said all this wording did was define "tax-exempt revenue bonds."

Vote:

The motion of Senator Aklestad to adopt amendments SB032901.AEM carried UNANIMOUSLY. Senator Lynch voted YES by proxy vote.

Discussion:

Senator Aklestad said the Committee was taking care of technicalities, but not reality in what the sponsor intended. He said the amendments would eliminate from the Bill the original intent of the sponsor. He urged the Committee to respect the original intent.

Motion\Vote:

Senator Blaylock moved amendments SB032903.AEM be adopted. The motion CARRIED with Senator Towe, Senator Wilson, and Senator Blaylock voting YES. Senator Lynch voted YES by proxy. Senator Keating, Senator Burnett, and Senator Aklestad voted NO.

Motion\Vote :

Senator Blaylock moved SB 329 DO PASS AS AMENDED. The motion carried with Senator Towe, Senator Blaylock, Senator Wilson, and Senator Keating voting YES. Senator Lynch voted YES by proxy. Senator Burnett and Senator Aklestad voted no.

EXECUTIVE ACTION ON SB 274

Motion\Vote:

Senator Keating moved SB 274 be TABLED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON SB 377

Discussion:

Senator Aklestad asked if there would be consideration to expand SB 377 to include other written, but not verbal agreements. He said the sponsor had indicated she would not want to expand the Bill to include other agreements. Senator Towe stated he would not favor an amendment such as the one offered by Senator Aklestad.

Motion\Vote:

Senator Blaylock moved the amendment (SB037701.AEM) submitted by Senator Bartlett be adopted. The motion carried UNANIMOUSLY, with Senator Lynch voting YES by proxy.

Motion:

Senator Blaylock moved SB 377 DO PASS AS AMENDED.

Discussion:

Senator Keating argued against SB 377. He said he understood the need for coffee breaks, but felt they should be part of an agreement between the employer and employee, not statutorily mandated. He said most employers would allow break time within the work schedule, and there was no real need for the Bill. Senator Keating stated SB 377 could hurt good employers. He argued that there would be challenges sought due to the provisions in SB 377. He continued that if the provisions of SB 377 were put into law, employers who were flexible before may become less flexible, allowing only what break time statutes said they must.

ROLL CALL

SENATE COMMITTEE Labor & Employment Relations DATE 1/20/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Towe	X		
Sen. Wilson	X		
Sen. Akkerstad	X		
Sen. Blaylock	X		
Sen. Keating	X		
Sen. Lynch	X		
Sen. Burnett	X		

FC8

Attach to each day's minutes

Amendments to Senate Bill No. 329
First Reading Copy

Requested by Senator Klampe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 17, 1993

1. Title, lines 5 and 6.
Following: "FINANCED" on line 5
Strike: remainder of line 5 through "REVENUE" on line 6
Insert: "FROM THE PROCEEDS OF"
Following: "BONDS"
Insert: "ISSUED ON OR AFTER JULY 1, 1993"

2. Page 3, line 1.
Page 6, line 3.
Page 9, lines 25 and 26.
Page 11, line 24.
Following: "financed"
Strike: "in whole or in part by tax-exempt revenue bonds"
Insert: "from the proceeds of bonds issued under this part on or after July 1, 1993,"

3. Page 8, lines 12 and 13.
Following: "financed"
Strike: remainder of line 12 through "bonds" on line 13
Insert: "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993,"

Amendments to Senate Bill No. 329
First Reading Copy

Requested by Senator Towe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 18, 1993

1. Page 2, lines 22 and 23.
Page 5, lines 24 and 25.
Following: "(g)"
Strike: remainder of line through "hospital,"

2. Page 8, lines 16 and 17.
Following: "performed"
Strike: remainder of line 16 through "or" on line 17

3. Page 11, lines 19 through 21.
Following: "(6)"
Strike: remainder of line 19 through "the" on line 21
Insert: "The"

Amendments to Senate Bill No. 342
First Reading Copy

Requested by Senator Towe
For the Seante Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 20, 1993

1. Page 2, line 24 through page 3, line 3.
Following: "labor." on line 24
Insert: "(5)"
Following: "subcontractor" on line 25
Strike: remainder of line 25 through "agreement" on page 3 line 1
Insert: ", except those described in subsection (4),"
Following: "hourly" on page 3, line 2
Strike: remainder of line 2 through "18-2-402" on line 3
Insert: "wage as defined in 18-2-401"

2. Page 3, line 19.
Following: line 18
Insert: "Basic hourly wage" means that portion of the standard prevailing wage that is [redacted] taxable."
Renumber: subsequent subsections

ROLL CALL VOTE

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS BILL NO. SB 329

DATE 20 February 1993 TIME 5:25 A.M. (P.M.)

NAME	YES	NO
Sen. Tom Towe	X	
Sen. Bill Wilson	X	
Sen. Jim Burnett		X
Sen. J.D. Lynch	X	
Sen. Chet Blaylock	X	
Sen. Tom Keating		X
Sen. Gary Hklestad		X

Kelsey Chapman
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that Amendments (SB032903.AEM). Be ADOPTED.

ROLL CALL VOTE

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS BILL NO. SB 329

DATE 20 February 1993 TIME 5:26 A.M. (P.M.)

NAME	YES	NO
Sen. Tom Towe	X	
Sen. Bill Wilson	X	
Sen. Jim Burnett		X
Sen. J.D. Lynch	X	
Sen. Chet Blaylock	X	
Sen. Tom Keating	X	
Sen. Gary Hklestad		X

Kelsey Chapman
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that SB 329 Do pass as amended.

SENATE STANDING COMMITTEE REPORT

February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 329 (first reading copy -- white), respectfully report that Senate Bill No. 329 be amended as follows and as so amended do pass.

Signed: _____
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, lines 5 and 6.
Following: "FINANCED" on line 5
Strike: remainder of line 5 through "REVENUE" on line 6
Insert: "FROM THE PROCEEDS OF"
Following: "BONDS"
Insert: "ISSUED ON OR AFTER JULY 1, 1993"

2. Page 2, lines 22 and 23.
Page 5, lines 24 and 25.
Following: "(g)"
Strike: remainder of line through "hospital,"

3. Page 3, line 1.
Page 6, line 3.
Page 9, line 25 through page 10, line 1.
Page 11, line 24.
Following: "financed"
Strike: "in whole or in part by tax-exempt revenue bonds"
Insert: "from the proceeds of bonds issued under this part on or after July 1, 1993,"

4. Page 8, lines 12 and 13.
Following: "financed"
Strike: remainder of line 12 through "bonds" on line 13
Insert: "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993,"

5. Page 8, lines 16 and 17.
Following: "performed"
Strike: remainder of line 16 through "or" on line 17

6. Page 11, lines 19 through 21.
Following: "(6)"
Strike: remainder of line 19 through "the" on line 21
Insert: "The"

-END-

Amd. Coord.
Sec. of Senate

431150SC.Sma

- BILL NO -	REFERRED -	HEARING -	OTHER CONSIDERATION DATES -	EXECUTIVE ACTION/DATE/VOTE -------	REREFERRED ----	DATE READ
SB0091	CHRISTIAENS, CHRIS		EXTEND WORKER'S COMPENSATION COVERAGE TO PRERELEASE, DIVERSIONARY PROGRAMS			
	1/30	3/02	3/4 DEFERRED	CONCUR AS AMENDED 3/11 VOTE: 16-0		3/16
SB0116	HARP, JOHN		EXCLUDING CERTAIN OUTSIDE SALESMEN FROM OVERTIME AND MINIMUM WAGE LAWS			
	1/23	2/04		CONCUR 2/4 VOTE: 16-0		2/10
SB0160	RYE, DAVID		PROHIBIT DISCRIMINATION FOR LAWFUL USE OF PRODUCT AWAY FROM WORK			
	1/30	3/02		CONCUR AS AMENDED 3/4 VOTE: 15-1		3/06
SB0163	HARP, JOHN		CREATE SAFETY CULTURE ACT REQUIRING EMPLOYERS ESTABLISH SAFETY PROGRAMS			
	3/11	3/16		CONCUR 3/18 VOTE: 15-1		3/20
SB0164	HARP, JOHN		CREATE FRAUD INVESTIGATION OFFICE IN DEPT OF JUSTICE & PREVENTION IN ST FUND			
	3/11	3/16		CONCUR 3/18 VOTE: 16-0		3/20
SB0184	BLAYLOCK, CHET		GENERALLY REVISE UNEMPLOYMENT INSURANCE LAWS			
	2/08	3/02		CONCUR AS AMENDED 3/4 VOTE: 16-0		3/06
SB0207	WILSON, WILLIAM		REVISE THE MONTANA WAGE PROTECTION LAWS			
	2/06	3/04		CONCUR 3/4 VOTE: 15-1		3/06
SB0223	BARTLETT, SUE		REVISE CHILD LABOR LAWS			
	2/23	3/09		CONCUR AS AMENDED 3/11 VOTE: 10-6		3/16
SB0256	SWYSGOOD, CHUCK		DEFINE NONRESIDENT EMPLOYEE OR WORKER IN THIS STATE FOR WORK COMP PURPOSES			
	2/23	3/04		CONCUR AS AMENDED 3/11 VOTE: 16-0		3/16
SB0270	KEATING, TOM		ESTABLISH EMPLOYMENT SECURITY ACCOUNT AND ALLOW FUND TRANSFERS			
	2/23	3/04		CONCUR 3/4 VOTE: 13-3		3/06
SB0329	KLAMPE, TERRY		REVISE PREVAILING WAGE ON PROJECTS FINANCED FROM BOND PROCEEDS AFTER 6/30/93			
	3/01	3/09		CONCUR AS AMENDED 3/11 VOTE: 9-7	LABOR & EMPLOYMENT	3/16
SB0329	KLAMPE, TERRY		REVISE PREVAILING WAGE ON PROJECTS FINANCED FROM BOND PROCEEDS AFTER 6/30/93			
	3/19			CONCUR AS AMENDED 3/11 VOTE: 9-7		3/22

SENATE BILL NO. 329

INTRODUCED BY KLAMPE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED ~~WITH TAX-EXEMPT REVENUE~~ FROM THE PROCEEDS OF BONDS ISSUED ON OR AFTER JULY 1, 1993; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. **Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

SB 0329/02

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt

THERE ARE NO CHANGES IN THIS BILL AND WILL NOT BE REPRINTED. PLEASE REFER TO YELLOW COPY FOR COMPLETE TEXT.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 329

INTRODUCED BY KLAMPE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED ~~WITH TAX-EXEMPT REVENUE~~ FROM THE PROCEEDS OF BONDS ISSUED ON OR AFTER JULY 1, 1993; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

~~(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital,~~ an applicant has submitted a statement that indicates that

SECOND READING

any contract let for a project costing more than $25,000 and financed ~~in whole or in part by tax exempt revenue bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if ~~no~~ a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the

state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 2. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of

credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

~~(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital,~~ an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed ~~in whole or in part by tax-exempt revenue bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if ~~no~~ a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14

days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception.** (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, ~~and~~ travel ~~allowance, provisions~~ and other bona fide programs approved by the United States department of labor, that are in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

(4) A contract let for a project costing more than $25,000 and financed ~~in--whole--or--in-part-by-tax-exempt industrial-revenue-bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER TITLE 17, CHAPTER 5, PART 15, OR TITLE 90, CHAPTER 5 OR 7, ON OR AFTER JULY 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed ~~unless-the-project-will-be-owned-and operated-by-a-nonprofit-corporation-other-than-a-hospital-or~~ unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(5) No A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions described in subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in ~~such~~ a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency."

Section 4. Section 90-5-114, MCA, is amended to read:

"**90-5-114. Preference of Montana labor.** (1) Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the

qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed ~~in whole or in part by tax-exempt revenue bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the project will be owned and operated by a nonprofit corporation other than a hospital or unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed."

Section 5. Section 90-7-302, MCA, is amended to read:

"**90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $150 million, exclusive of bonds or notes issued to refund its outstanding bonds or notes.

(2) Bonds must be authorized, ~~and~~ must be dated, and ~~shall~~ must mature as the authority may specify, except that ~~no~~ a bond may not mature more than 40 years from the date of its issue. Bonds ~~shall~~ must bear interest at the rate or rates, be in the denominations, be in the proper registered

or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves ~~therefor~~ for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) ~~Except--for--a--project--that--will--be--owned--and~~

~~operated--by--a-nonprofit-corporation-other-than-a-hospital;~~ ~~the~~ THE authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed ~~in--whole--or--in-part-by-tax-exempt revenue-bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(6)~~(7) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

NEW SECTION. **Section 6.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 9, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)

Members Excused: Rep. Whalen & Rep. Tuss

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 223, SB 329, SB 342 & SB 381
Executive Action: None

HEARING ON SB 223

Opening Statement by Sponsor:

REP. SUE BARTLETT, SD 23, Lewis and Clark County, sponsor, opened on SB 223 by stating that this bill was developed to revise child labor laws. This bill was developed to do three things. These three things are to conform to Montana statutes, to define hazardous jobs for those under 18, and to estimate the maximum hours per day a 14 and 15 year old can work. This bill prohibits work during school hours, unless it is an apprenticeship program.

Opponents' Testimony:

Lloyd Lockram, Health Care Trust, referred to page 14 of the bill. His organization supports the passage of SB 342.

Carl Schweitzer, Montana Contractors Association, stated that his organization is opposed to SB 342 because there could be a problem with monitoring the certified payrolls. He asked the committee to consider sending SB 342 to a sub-committee.

Mike Micone, Department of Labor, (EXHIBIT #7).

Questions From Committee Members and Responses:

REP. PAVLOVICH asked if the amendment was brought up in the Senate?

REP. WILSON stated no.

Closing by Sponsor:

SEN. WILSON closed on SB 342 by stating that everyone wins.

CHAIRMAN NELSON appointed **REP. HANSON, REP. MILLS, AND REP. DRISCOLL** to a subcommittee on SB 342.

HEARING ON SB 329

Opening Statement by Sponsor:

SEN. TERRY KLAMPE, SD 31, Missoula, sponsor, opened on SB 329 by stating the three different concepts of the bill. The three concepts are tax exempt bonds, prevailing wage and nonprofit organizations. The purpose of the bill is to revise prevailing wage on projects financed from bond proceeds after 6/30/93. **SEN. KLAMPE** stated that this bill is a reasonable request with a very narrow focus. He referred to 501(c)(3) organizations of Internal Revenue Code Annotated. He stated that SB 329 will clear up any confusion about paying prevailing wage.

Proponents' Testimony:

Mae Nan Ellington, Dorsey and Whitney, stated that SB 329 will clarify the kind of bonds prevailing wage applies to. She provided the committee with written testimony. **EXHIBIT #8**

Bill Egan, Montana Confederation of Electrical Workers, stated that 501(c)(3) is very broad designation and has lots of room for mischief. He stated that his organization supports SB 329 without the proposed amendments.

Eugene Fenderson, District Council, stated that the language in the bill needs to be straightened out. He stated that his

organization supports SB 329 without the proposed amendments.

Russ Ritter, Washington Contractors, stated that his organization supports the original bill and the proposed amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. DRISCOLL told Mae Nan that 17-5-1526, MCA, applies to bonds on specific projects. He asked her if the standard rate of prevailing wage is the same on all the bonds?

Mae Nan stated yes, that under 17-5-1526, MCA, refers to bonds issued by the board of investments under the economical bond act and it would apply, as written, to all bonds written by them.

REP. DRISCOLL referred to section 4, line 10 and 11 of the bill which states that prevailing wage must be paid unless the project is owned and operated by an nonprofit organization. If ice rink gets money from the city of Missoula; therefore, they do not have to pay prevailing wage.

Mae Nan stated that this is the way it appears; however there may have been a mistake. You are correct if the city issued their bonds under title 90 chapter 5.

REP. DRISCOLL asked **SEN. KLAMPE** why they need the amendment if the city of Missoula is selling the bond and financing the rink?

SEN. KLAMPE stated that **REP. DRISCOLL** picked out a flaw in the way the bill was brought from the Senate to the House. We are prepared to deal with this if the other amendment offered today doesn't go through. With the proposed amendment, this language does not need to be added because it is already there.

Closing by Sponsor:

SEN. KLAMPE closed on SB 329 by apologizing for the flaw in the bill. He reminded that prevailing wage requirement was implemented in 1991. The passage of this bill will allow a nonprofit organization to get a bond for less because it is tax exempt. He encourage the committee to concur with the bill.

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 3/9/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS			✓
REP. TIM WHALEN			✓

EXHIBIT 4B
LABOR 3/9/93
DATE 3/9/93
HB SB329

DORSEY & WHITNEY

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35 SQUARE DE MEEÛS
B-1040 BRUSSELS, BELGIUM
32-2-504.46.11

TO: Members of House Labor and Employment Committee

FROM: Dorsey & Whitney

DATE: March 9, 1993

RE: SB 329

The 52nd Legislature in 1991 enacted HB 591, which provides as follows:

> A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

That bill has been codified in the public contract laws at Section 18-2-403(4). At least three significant problems have arisen relating to this law: (1) it is not clear what bonds are referred to in the phrase "tax-exempt industrial revenue bonds"; (2) because the law is not codified or referred to in any of the statutes relating to the issuance of tax-exempt bonds, most issuers and underwriters of bonds, bond counsel, borrowers and others working with tax-exempt bonds have been unaware of the law, with the result that the law may often but inadvertently have been violated; and (3) because the law refers to "a contract let for a project" it is not clear how it applies in the case of a total construction program of which a bond-financed project might be but a part.

We encourage this committee and the legislature to approve legislation which would: (1) clarify which type of bonds the prevailing wage requirement applies to, (2) direct that the provision be codified or referred to in the appropriate bond statutes, (3) clarify how it applies to large undertakings of which bond-financed projects are but a part, and (4) establish that if and to the extent the prevailing wage

requirement applies to bond-financed projects, it applies only to projects financed by bonds issued after the effective date of the clarifying legislation.

Background of HB 591. HB 591 was introduced in the 1991 session as a bill entitled "A Bill to Require that a Contract Let for a Project Costing More Than $25,000 and Receiving a State Tax Exemption Contain a Provision Requiring the Contractor to Pay the Standard Prevailing Wage." Even though HB 591 was amended in the House Taxation Committee to substitute the term "financed in whole or in part by tax-exempt industrial revenue bonds" for "receiving a state tax exemption," a significant change in concept, the status sheet through the legislative session continued to define the bill as "Prevailing Wage Law Applies to Tax Exempt Project". This may explain, at least in part, why persons involved with the issuance of tax-exempt industrial revenue bonds did not attend the committee meetings, did not offer comments in 1991, and were generally not aware of the passage of the law. I have reviewed the testimony on HB 591 before both the House Taxation Committee and the Senate Taxation Committee, and do not find anywhere a clear statement of the intent of the sponsor of the legislation as to the applicability of the proposed legislation. Those minutes also reflect a misunderstanding of "tax-exempt industrial revenue bonds." To aid the Committee in appreciating the problem which the law has created and determining how to amend the law, we think it might be helpful to describe the term "tax-exempt industrial revenue bonds", who issues them in Montana and for what purposes.

Overview of Industrial Revenue Bonds. Before 1968, the Internal Revenue Code permitted the issuance of state and local bonds on a tax-exempt basis even if the proceeds of the bonds were used completely for private purposes. As a general rule, State statutes authorized the issuance of such bonds where the State or local government found that tax-exempt financing could serve, foster or encourage within its jurisdiction a public interest or public purpose, such as economic development and job creation through industrial, manufacturing, and commercial projects. Similarly, tax-exempt financing was made available to organizations providing goods and services of benefit to the community, such as hospitals and other health care facilities, pollution control facilities, multifamily housing, hydroelectric facilities and recreation facilities. The State statutes authorizing these bonds generally characterized them as industrial revenue bonds ("IRB's"), industrial development bonds ("IDB's"), or economic development bonds. In 1968, Congress amended the Internal Revenue Code to include a definition of "industrial development bond". In essence an industrial development bond was an issue of bonds more than 25% of the proceeds of which was used in the trade or business of a

Exhibit #8
3-9-93
SB-329

non-exempt person and more than a major portion of the principal and interest of which was secured by, or was to be derived from, payments in respect of property used in a trade or business. With the 1968 amendment interest on industrial development bonds became subject to federal income taxation unless the bonds were within one of several exceptions.

The state or municipality issuing industrial development bonds was rarely if ever the obligor on the bonds. Most often, the issuer would loan the proceeds of the bonds to the private borrower, who would agree to use the proceeds to construct or acquire a particular facility and to repay the loan at times and in amounts sufficient to pay the principal of and interest on the bonds when due. In Montana, like most states, the enabling legislation provided that the issuer had no pecuniary liability on the bonds so issued. Since no public money was involved, other than the proceeds of the bonds which were repayable by the private borrower, and the project was not a public facility, such projects have not generally been subject to the competitive bidding requirements or other laws applicable to public projects or contracts. Similarly, recognizing the private character of the bond-financed projects, the projects are normally subject to property taxes, unless the financing itself is for a tax-exempt organization, such as a hospital.

Over the years and particularly since 1986, the restrictions on tax-exempt financing for the benefit of private parties have increased. With the adoption of the Internal Revenue Code of 1986, the term "industrial development bonds" or IDB's" as they were called, was removed from the Code. Instead, the 1986 Code now refers to "private activity bonds," which are defined so as to include all bonds which were industrial development bonds but also includes a variety of other bonds which were not industrial development bonds.

Under the Code as it currently exists, private activity bonds bear interest exempt from federal income taxes only if they satisfy many statutory requirements and regulations and are issued for one of the following purposes:

A. Exempt Facilities Bonds
   (1) airports,
   (2) docks and wharves,
   (3) mass commuting facilities,
   (4) facilities for the furnishing of water,
   (5) sewage facilities,
   (6) solid waste disposal facilities,

(7) qualified residential rental projects,
(8) facilities for the local furnishing of electric energy or gas,
(9) local district heating or cooling facilities,
(10) qualified hazard waste facilities, or
(11) high-speed intercity rail facilities;

B. Qualified Student Loan Bonds; or

C. Qualified 501(c)(3) Bonds (this includes hospitals).

In Montana, there are currently five entities that are specifically authorized to issue "private activity bonds". In addition, the State, through the Board of Examiners, may issue bonds which would generally be deemed to be "private activity bonds" for purposes of the Code, even though the facility financed is owned and operated by the State. The Broadwater Dam project is a good example. Similarly, cities are authorized by Title 7, chapter 7, part 44, to issue revenue bonds to finance various facilities, including airports and public parking facilities; such bonds, because of the "non-governmental use" of the facilities, may also be private activity bonds. In addition, cities and now counties are authorized to issue tax increment bonds for certain purposes and some of such bonds may also constitute private activity bonds. To complicate matters further, they may bear interest that is not tax-exempt for federal tax purposes.

1. Cities and counties have been authorized since 1965 under the provisions of Title 90, Chapter 5, Part 1, MCA, to issue bonds to finance projects for "commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects." Bonds issued to finance some of these projects, even though permitted by Montana law, would no longer qualify for federal tax exemption. While the title of Chapter 5 of Title 90 is "Industrial Development Projects," the statute itself does not use that term with reference to bonds issued under that law. (Generally, the title of the bonds would reflect the nature of the project for which the bonds were being issued, for example, "Hospital Revenue Bonds", "Solid Waste Facility Bonds" and would not likely be called "Industrial Revenue Bonds.") Was it the intent of HB 591 that the prevailing wage requirement extend to all types of bonds issued by cities and towns under this Act?

2. The Board of Investments is authorized to issue bonds for the same types of projects as those for which cities and counties may issue bonds, under the Economic Development Bond Act of 1983. As with the cities and counties, some of the authorized purposes may no longer be eligible for tax-exempt financing under the Code.

3. The Montana Health Facility Authority (the "MHFA") is authorized by Title 90, Chapter 7, Part 3, to issue bonds for eligible health facilities that are owned and operated by nonprofit corporations. Under this statute, the MHFA provides tax-exempt financing to hospitals, as well as small nonprofit corporations which construct, with tax-exempt bonds, facilities such as day care centers and group homes in local communities, which may in turn provide services to State clients on a contract basis with the State.

4. The Montana Board of Housing is authorized under Title 90, Chapter 6, Part 1, to issue bonds to finance both single family and multifamily housing.

5. The Montana Higher Education Student Assistance Corporation is authorized to issue Qualified Student Loan Bonds. Since those bonds would not finance projects within the meaning of 18-2-403(4), those bonds probably are not at issue here.

Under current Montana law, interest on bonds issued by Montana governmental entities is exempt from state income tax, whether or not such interest is exempt from federal income tax.

Currently, the laws governing the issue of private activity bonds by the Board of Investments and cities and counties do require contracts for the construction of bond financed projects to require that contractors give a preference to Montana labor. See 90-5-114, 17-5-1526 and 17-5-1527, MCA.

Current State of Confusion. Since HB 591 did not define the term "tax-exempt industrial revenue bonds," it is difficult to determine to which of the bonds described above the legislation was meant to apply. Because the Code no longer uses the term "tax-exempt industrial revenue bonds" (and did not include the term when HB 591 was passed), there is no extraneous definition to assist in interpretation. Under the 1954 Code definition (i.e., pre-1986), bonds issued to finance hospital projects owned and operated by a 501(c)(3)organization, would not

in most cases be industrial revenue bonds, but such bonds are likely to be private activity bonds under the 1986 Code. The committee minutes shed some light on the intent, but are in themselves confusing. It appears from the February 14 hearing in the House Taxation Committee, that the proponents believed that taxes or other public money was being used for the projects being financed. Two separate statements indicated that because the contractors were being paid from public funds to complete the projects, there was no reason to not make them subject to the prevailing wage. (Perhaps because of the discussion about public monies being used for these types of projects, it was deemed appropriate to codify HB 591 in Title 18, which is the title reserved for Public Contracts. No other provisions of the public contract law apply to projects financed with tax-exempt bonds, except the Montana labor preference which is clearly indicated in provisions of the pertinent bond law.) It is unclear, however, that the decision to require prevailing wage rested on whether public funds were actually being used. One proponent indicated an intent to have the provision apply when cities, counties and the State were issuing tax-exempt bonds to promote industrial and commercial expansion.

One proponent indicated that it was not the intent to have it apply to Board of Housing programs. It was suggested that an amendment would be offered to exempt the Board of Housing, but it does not appear that such an amendment was offered. No mention was made of an intent to have the statute apply to hospitals or other health care projects, but subsequently to enactment of the legislation a proponent has contended that its intent was to have it apply to hospitals.

Uncertainty as to Meaning of "Project". HB 591 by its terms applies to "a contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds." The term "project" is also used in the laws we referred to above which authorize the issuance of certain types of state and municipal bonds. If bonds are issued to finance a "project" which is but one component of a facility, it seems reasonable to interpret HB 591, if applicable, as meaning the bond-financed project, but it is also possible because of the phrase "financed in whole or in part" that the "project" under HB 591 is the total facility of which the bond-financed project is but a part. For example, the City of Great Falls has announced its intent to issue tax increment industrial infrastructure bonds to finance certain public improvements (streets, sewers, utilities, etc.) related to the American Ethanol project. The tax increment bonds will be issued in the approximate amount of $10,000,000-$12,000,000, but the total costs of the project are expected to be $80,000,000-$90,000,000. The contract for the improvements financed by the City's bonds would be subject to the prevailing wage law because the contract

would be a public contract as public money is being used to finance the improvements. There is a question under the statute whether the use of the tax increment bonds would cause the remainder of the project to be subject to the prevailing wage law. This uncertainty should be eliminated and would be eliminated in two respects by the adoption of the amendments proposed by Senator Klampe.

Policy Decision. We do not discuss whether it is good public policy to require that contracts for construction of projects financed in whole or in part with bonds which are private activity bonds under the Internal Revenue Code should contain a provision that the contractor pay the prevailing wage. That is obviously a policy decision for the legislature, and no doubt arguments may be made on both sides of this issue. (It should be noted, however, that the issuance of tax-exempt bonds is one of the few economic development tools that governmental entities in Montana have. We have not undertaken a survey of other states to determine how many require the payment of prevailing wages as a condition for tax-exempt bonds, but we do know that a substantial number of our neighboring states do not.) Our concern as lawyers, and more specifically as bond counsel and as counsel for state and local governments issuing private activity bonds, is that whatever the legislative decision, it should be expressed clearly. We think HB 591 is not clear and that parties most affected by its provisions (issuers and borrowers alike, as well as financial advisors and legal counsel) have not been aware of its existence. We therefore recommend that it be reconsidered and that if the prevailing wage requirement is retained, that it be clarified and made effective to contracts entered into with respect to bonds issued after a future date (e.g., July 1, 1993).

SB 329, as amended, would: (1) require the prevailing wage be paid on all contracts in excess of $25,000 for projects financed by tax-exempt revenue bonds; and (2) codify the requirement in the sections of law authorizing cities and counties, the Board of Investments and the Montana Health Facility Authority to issue tax-exempt bonds; and (3) provide that the provisions will be applicable for projects financed with bonds issued after July 1, 1993. As amended, the legislation no longer uses the term tax-exempt and instead refer to bonds issued by the entities described in the bill. This seems consistent with what we now understand to be the original intent and avoids having to try to define in the statute the terms "tax-exempt bond", "private activity bond" or "industrial revenue bond".

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR COMMITTEE BILL NO. SB 329

DATE 3/9/93 SPONSOR(S) KLAMPE

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Evan Fenn	Labor	with out amend	
Russ Ritter	Wash Corp	X	
Darrell Holzer	Mt. St. AFL-CIO	w/o Amend X	
Ron James	Ironworkers	X	
Mike Logan	MT Conf. Fleet Wkrs	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 11, 1993, at 3:05

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None
Executive Action:	SB 91, SB 381, SB 329, SB 223, SB 256, SB 342

EXECUTIVE ACTION ON SB 91

Motion: **REP. SIMON MOVED SB 91 DO BE CONCURRED IN. REP. SIMON MOVED TO AMEND.**

Discussion: **REP. TUSS** asked **REP. SIMON** if diversionary program is defined anywhere?

REP. SIMON told her that he does not know if it is defined in

law, but it means sentenced directly from court.

Motion/Vote: **REP. SIMON MOVED TO AMEND SB 91. REP. BENEDICT** called for the question on the amendment. A voice vote was taken. The motion to DO PASS **CARRIED** with **REP. COCCHIARELLA & REP. PAVLOVICH** voting no.

Vote: **REP. SIMON MOVED SB 91 DO BE CONCURRED IN AS AMENDED.** The question was called for. A voice vote was taken. The motion **CARRIED** unanimously. **REP. SIMON** agreed to carry SB 91 on the House Floor.

EXECUTIVE ACTION ON SB 381

Motion: **REP. DRISCOLL MOVED SB 381 DO BE CONCURRED IN.**

Discussion: **REP. DRISCOLL** proposed an amendment to the committee to amend the penalties for underinsured. He referred to page 1, section 2, line 22 and 23 and asked that it be amended to adopt similar language in 39-71-504 MCA. He stated that underinsured must "knowingly" underinsure. If it is an honest mistake, the fine could double the premium or raise it up to $200.

REP. TUNBY asked **REP. DRISCOLL** what happens if this goes on and on for many years?

REP. DRISCOLL stated that nothing happens until they are caught cheating the system.

REP. SIMON asked **REP. DRISCOLL** to add a three-year statute of limitation to his amendment.

REP. BENEDICT suggested to **REP. DRISCOLL** to take out intent of the employer on line 3, page 2 of the bill.

Motion/Vote: **REP. DRISCOLL MOVED THE AMENDMENT.** The question was called for on the amendment. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

Vote: **REP. ELLIS MOVED SB 381 BE CONCURRED IN AS AMENDED.** The question was called. A voice vote was taken. The motion **CARRIED** unanimously.

EXECUTIVE ACTION ON SB 329

Motion: **REP. DRISCOLL MOVED SB 329 BE CONCURRED IN.**

Motion/Vote:

REP. BENEDICT MOVED THE KLAMPE AMENDMENTS. REP. BENEDICT explained the Klampe amendments to the committee. The question

was called on the Klampe amendments. A voice vote was taken. The motion to DO PASS **CARRIED** 9 to 7.

REP. PAVLOVICH MOVED SB 329 BE TABLED. A voice vote was taken. The motion to TABLE **FAILED** 7 to 9.

REP. HANSON MOVED HIS PROPOSED AMENDMENT. He told the committee that his amendment will strike the wording "eliminated other bonified programs by the Department of Labor". The question was called on the Hanson amendments. The motion to DO PASS **CARRIED** 15 to 1 with **REP. TUSS** voting no.

Vote: **REP. BENEDICT MOVED SB 329 BE CONCURRED IN AS AMENDED.** The question was called for. A voice vote was taken. The motion to **CARRIED** 9 to 7. **REP. HANSON** agreed to carry SB 329 on the House floor.

EXECUTIVE ACTION ON SB 223

Motion: **REP. COCCHIARELLA MOVED SB 223 BE CONCURRED IN.**

Discussion: **REP. COCCHIARELLA** stated that this bill will take care of the children. She stated that many people may not believe it, but there are children being abused and used.

REP. ELLIS stated that he is against the bill because it doesn't allow kids to work on the family farm unloading trucks.

REP. FELAND told **REP. ELLIS** that these kids could perform this farm work with written permission.

REP. SIMON proposed an amendment to add the word "meat" before the word "processing" on page 8, line 9. The amendment was moved. The question was called on the Simon amendment. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

REP. MILLS stated that he is against the bill because he can't hire his son's buddy to work on the family farm. He stated that work is very important for young people to learn how to perform work at an early age.

REP. GALVIN stated that he is still concerned with the freight elevator. He asked the committee to define the difference between a freight elevator and an passenger elevator. **REP. GALVIN** told the committee that a freight elevator is not enclosed.

REP. SIMON stated that there should be no problem with a delivery boy delivering chocolates on a freight elevator if that is all that is available because the boy is not employed by the elevator.

HOUSE STANDING COMMITTEE REPORT

March 12, 1993

Mr. Speaker: We, the committee on Labor report that Senate Bill 329 (third reading copy -- blue) be concurred in as amended.

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read: Carried by: Rep. Hanson

1. Page 2, line 24.
Page 6, line 2.
Following: "~~hospital,~~"
Insert: "except for a project that will be owned and operated by a nonprofit corporation, as described in section 501(c)(3) of the Internal Revenue Code, other than a hospital,"

2. Page 8, line 5.
Following: "contributions"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974"

3. Page 8, line 22.
Following: "~~or~~"
Insert: "unless the project will be owned and operated by a nonprofit corporation, as described in section 501(c)(3) of the Internal Revenue Code, other than a hospital, or"

4. Page 10, line 11.
Following: "corporation"
Insert: ", as described in section 501(3)(c) of the Internal Revenue Code,"
Following: "hospital"
Insert: ","

5. Page 12, line 2.
Following: "~~the~~"
Strike: "THE"
Insert: "Except for a project that will be owned and operated by a nonprofit corporation, as described in section 501(3)(c) of the Internal Revenue Code, other than a hospital, the"

SB 329

HOUSE

Committee Vote:
Yes 9, No 7.

HOUSE STANDING COMMITTEE REPORT

March 22, 1993
Page 1 of 2

Mr. Speaker: We, the committee on Labor report that Senate Bill 329 (third reading copy -- blue) be concurred in as amended.

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read: Carried by: Rep. Hanson

1. Page 2, line 24.
Page 6, line 2.
Following: "~~hospital,~~"
Insert: "except for a project that will be owned and operated by a nonprofit corporation, as described in section 501(c)(3) of the Internal Revenue Code, other than a hospital,"

2. Page 8, line 5.
Following: "contributions"
Strike: "~~,~~"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974"
Following: "~~and~~"
Insert: "and"
Following: "travel"
Insert: "allowance provisions,"

3. Page 8, lines 6 and 7.
Following: "~~allowance~~" on line 6
Strike: "~~,~~"
Following: "~~provisions~~" on line 6
Strike: the remainder of line 6 through "are" on line 7

4. Page 8, line 22.
Following: "~~or~~"
Insert: "unless the project will be owned and operated by a nonprofit corporation, as described in section 501(c)(3) of the Internal Revenue Code, other than a hospital, or"

5. Page 10, line 11.
Following: "corporation"
Insert: ", as described in section 501(3)(c) of the Internal Revenue Code,"

Committee Vote:
Yes ___, No ___.

641442SC.Hss

Following: "hospital"
Insert: ","

6. Page 12, line 2.
Following: "~~the~~"
Strike: "THE"
Insert: "Except for a project that will be owned and operated by a nonprofit corporation, as described in section 501(3)(c) of the Internal Revenue Code, other than a hospital, the"

HOUSE
SB 329
641442SC.Hss

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 329
Representative Driscoll

March 29, 1993 7:52 am

Mr. Chairman: I move to amend Senate Bill 329 (third reading copy -- blue).

Signed: _____
Representative Driscoll

And, that the Labor Committee amendments, dated March 22, 1993, to Senate Bill 329 be amended as follows:

1. Strike: committee amendments 1 and 3 through 6 [preserving amendment 2].

And that the 3rd reading copy be further amended:

2. Page 10, lines 10 through 14.
Following: "performed" on line 10
Strike: remainder of line 10 through "performed" on line 14

-END-

ADOPT

REJECT

SB 329

HOUSE

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 329
Representative Driscoll

March 30, 1993 11:18 am

Mr. Chairman: I move to amend Senate Bill 329 (third reading copy -- blue).

Signed: Driscoll
Representative Driscoll

And, that such amendments to Senate Bill 329 read as follows:

1. Strip the House Labor Committee amendments dated March 12, 1993, in their entirety

2. Strike House Labor Committee amendments dated March 22, 1993, in their entirety

3. Strip the Committee of the Whole amendments dated March 29, 1993, in their entirety

4. Page 8, line 3.
Following: "pay"
Insert: ": (a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and
(b)"

5. Page 8, line 5.
Strike: "travel"

6. Page 8, line 6.
Strike: ","
Following: "~~provisions~~"
Insert: "that: (i) meets the requirements of the Employee Retirement Income Security Act of 1974"

7. Page 8, line 7.
Strike: ", that are"
Insert: "; and (ii) is"

8. Page 10, lines 10 through 14.
Following: "performed" on line 10
Strike: remainder of line 10 through "performed" on line 14

-END-

SB 329

ADOPT

HOUSE

REJECT

711118CW.Hpf

SENATE BILL NO. 329

INTRODUCED BY KLAMPE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED ~~WITH TAX-EXEMPT-REVENUE~~ FROM THE PROCEEDS OF BONDS ISSUED ON OR AFTER JULY 1, 1993; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. **Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

~~(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital, EXCEPT FOR A PROJECT THAT WILL BE OWNED AND OPERATED BY A~~

REFERENCE BILL
AS AMENDED

~~NONPROFIT-CORPORATION,-AS-DESCRIBED-IN-SECTION-501(c)(3)--OF THE--INTERNAL--REVENUE--CODE,--OTHER--THAN--A--HOSPITAL,~~ an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed ~~in--whole--or--in-part-by-tax-exempt-revenue-bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination

of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 2. Section 17-5-1527, MCA, is amended to read:

"17-5-1527. **Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project

or projects, to create and maintain reserves ~~therefor~~ for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

~~(g) except for a project that will be owned and operated by a nonprofit corporation other than a hospital; EXCEPT FOR A PROJECT THAT WILL BE OWNED AND OPERATED BY A NONPROFIT CORPORATION OTHER THAN A HOSPITAL,~~ an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed ~~in whole or in part by tax-exempt revenue bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if no a request for a local hearing is not received, the board may hold the hearing at a time and place

it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception.** (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance

work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay:

(A) THE TRAVEL ALLOWANCE THAT IS IN EFFECT AND APPLICABLE TO THE DISTRICT IN WHICH THE WORK IS BEING PERFORMED; AND

(B) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, ~~THAT--MEET-THE-REQUIREMENTS-OF-THE-EMPLOYEE-RETIREMENT-INCOME--SECURITY--ACT--OF--1974~~ and ~~AND~~ ~~travel-ALLOWANCE-PROVISIONS~~ allowance, provisions THAT:

(I) MEETS THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 ~~and--other--bona--fide--programs approved--by-the-United-States-department-of-labor~~ that are AND OTHER BONA FIDE PROGRAMS APPROVED BY THE UNITED STATES DEPARTMENT OF LABOR~~-THAT-ARE~~; AND

(II) IS in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor

to pay the heavy highway construction wage rates established statewide for such project.

(4) A contract let for a project costing more than $25,000 and financed ~~in--whole--or--in--part--by--tax-exempt industrial--revenue--bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER TITLE 17, CHAPTER 5, PART 15, OR TITLE 90, CHAPTER 5 OR 7, ON OR AFTER JULY 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed ~~unless the project will be owned and operated by a nonprofit corporation other than a hospital or UNLESS THE PROJECT WILL BE OWNED AND OPERATED BY A NONPROFIT CORPORATION, AS DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, OTHER THAN A HOSPITAL, OR~~ unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions described in subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in ~~such~~ a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or

discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency."

Section 4. Section 90-5-114, MCA, is amended to read:

"**90-5-114. Preference of Montana labor.** (1) Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed ~~in--whole--or--in--part--by--tax-exempt revenue--bonds~~ FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the

work is being performed ~~unless-the-project-will-be-owned-and operated-by-a-nonprofit-corporation,-AS-DESCRIBED-IN-SECTION 501(3)(C)--OF--THE--INTERNAL--REVENUE--CODE,~~ other--than--a hospital, ~~or-unless-the-contractor-performing-the--work--has entered--into-a-collective-bargaining-agreement-covering-the work-to-be-performed.~~"

Section 5. Section 90-7-302, MCA, is amended to read:

"90-7-302. Bonds and notes of the authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $150 million, exclusive of bonds or notes issued to refund its outstanding bonds or notes.

(2) Bonds must be authorized, ~~and~~ must be dated, and ~~shall~~ must mature as the authority may specify, except that ~~no~~ a bond may not mature more than 40 years from the date of its issue. Bonds ~~shall~~ must bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or

times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves ~~therefor~~ for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

~~(6) Except--for--a--project--that--will--be--owned--and operated--by--a-nonprofit-corporation-other-than-a-hospital,~~ ~~the~~ ~~THE~~ THE ~~EXCEPT-FOR-A-PROJECT--THAT--WILL--BE--OWNED--AND OPERATED-BY-A-NONPROFIT-CORPORATION,-AS-DESCRIBED-IN-SECTION 501(3)(C)--OF--THE--INTERNAL--REVENUE--CODE,--OTHER--THAN--A HOSPITAL,--THE~~ authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed ~~in-whole-or-in-part-by--tax-exempt~~

revenue--bonds FROM THE PROCEEDS OF BONDS ISSUED UNDER THIS PART ON OR AFTER JULY 1, 1993, will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(6)~~(7) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-End-